

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of  
  
Policies and Rules  
Concerning Toll Fraud

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CC Docket No. 93-292

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**PACTEL CORPORATION'S REPLY COMMENTS**

PacTel Corporation ("PacTel"),<sup>1</sup> an independent, publicly-traded subsidiary of Pacific Telesis Group, is one of the world's leading wireless telecommunications companies with significant domestic cellular, paging and vehicle location interests, as well as major international wireless operations. Subject to the approval of Pacific Telesis Group's Board of Directors, PacTel expects to be spun-off into a completely separate company during the first half of 1994. As one of the largest providers of cellular telephone services, PacTel has an important and continuing interest in combating the serious problems being caused by cellular and toll fraud.

As is well known throughout the cellular industry, PacTel has played a leadership role for many years in identifying and fighting various types of cellular fraud.<sup>2</sup> For example, PacTel's operations in the enormous Los Angeles market were, in January 1991, the first to attempt to prevent "tumbling" fraud by installing and operating pre-call validation based upon IS-41. Similarly, using sophisticated fraud profiling techniques, PacTel developed and instituted

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<sup>1</sup>An index of other abbreviations used in these Reply Comments is attached as Appendix A.

<sup>2</sup>Among other things, PacTel representatives have been active participants in CTIA's Fraud Task Force (see CTIA Comments at 3-4), and PacTel has retained private security consultants to investigate and to help law enforcement officials prosecute many cellular fraud cases.

the cellular industry's first real-time fraud detection system. Also, in an attempt to use complex new technology to combat counterfeit access (i.e., "cloning"), PacTel conceived of and co-developed a pre-call fraud denial system using state of the art cellular phone recognition technology that analyzes the unique radio frequency characteristics (i.e., "signature" or "fingerprint") of each cellular telephone. This PhonePrint® system, which was co-developed with TRW, is currently undergoing field trials and, if it is found to be successful, it will be made generally available to the cellular industry.

Despite the best efforts of PacTel and others to develop technical and operational solutions to combat fraud, the Commission must assume that those responsible for creating and perpetrating cellular fraud will use increasingly sophisticated means to continue to commit such crimes. In reviewing the comments that have already been filed in this proceeding, PacTel strongly believes that four core decisions must be made promptly by the Commission to assist carriers and the public to combat cellular and interexchange telephone fraud.<sup>3</sup>

First, PacTel fully endorses the recommendation made by Sprint that the Commission not only adopt quickly its proposed Section 22.929 -- prohibiting the alteration of a cellular telephone's electronic serial number ("ESN") -- but also that proposed Section 22.929 "be modified to require cellular phone design which prohibits transmission of anything other than

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<sup>3</sup>On the other hand, PacTel does not believe that it is necessary for the Commission to establish a new Federal Advisory Committee (NPRM at para. 13) as there are already adequate opportunities, such as this proceeding and established industry organizations, for interested parties to suggest to the Commission solutions for cellular and toll fraud problems. Furthermore, PacTel is concerned that such a Committee would slow down the ability of the Commission and Congress to implement actively and quickly important anti-fraud actions.

the original factory installed ESN."<sup>4</sup> Adopting this regulatory requirement would greatly serve the public interest as it would sharply reduce the ability of cellular telephones to be used to commit fraud.

Second, the Commission should affirm that carriers can voluntarily apportion the risk associated with fraud through the use of carrier-to-carrier agreements. By allowing carriers to resolve these issues voluntarily among themselves, it is more likely that economically efficient fraud detection and prevention systems will be instituted and that those parties most capable of preventing or minimizing cellular fraud will do so.<sup>5</sup> However, in situations in which there are no such bilateral carrier-to-carrier agreements, such as when cellular carriers provide "equal access" to interexchange carriers ("IXCs") or when callers use calling or credit cards, then cellular carriers should not be held responsible for fraudulent IXC charges.<sup>6</sup> In contrast to the claims of some,<sup>7</sup> IXCs are, in fact, capable of controlling IXC fraud that originates with criminals using cellular telephones. This can be done, for example, by IXCs using many of the same types of systems and techniques that they use to control traditional IXC fraud.<sup>8</sup> This can

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<sup>4</sup>Sprint at 13. PacTel also agrees with Sprint that authorized dealers should be permitted to move an ESN between phones for maintenance purposes, since there would still be only one unique ESN for each phone. See also CTIA at 6, n. 10.

<sup>5</sup>See, e.g., CTIA at 12-13; McCaw at 13-14; Vanguard at 5-8; Southwestern at 9; and SNET at 10.

<sup>6</sup>As a result, the Commission should make clear that cellular carriers have no financial responsibility or liability whatsoever regarding fraudulent IXC calls when the ability to place such calls is restricted by the carrier to "0+" dialing.

<sup>7</sup>AT&T at 30 and MCI at 13.

<sup>8</sup>Because IXCs can prevent fraudulent calls that originate from cellular telephones, in those resale situations for which there are no explicit carrier-to-carrier agreements regarding the allocation of risk associated with fraudulent calling, the Commission should establish a policy

include restricting "1 + " dialing to certain countries and the use of sophisticated monitoring and profiling techniques to identify and stop fraudulent calling. Since in these non-resale situations the cellular company is not the IXC's "customer" nor the end user's IXC, it can not and should not be held responsible in any way for the IXC portion of the fraud.

Third, in most instances a cellular customer should not be held responsible for cellular fraud that is committed by the random, unauthorized use of its cellular telephone. This has been the general practice throughout the cellular industry<sup>9</sup> and has always been PacTel's policy. However, there can be instances in which cellular customers take action that directly result in "unauthorized" or fraudulent calling. For example, some customers loan their cellular phones to others and then attempt to disavow responsibility for paying for those calls. Such customers must be held responsible for payment for those "fraudulent" calls just as they are when such calls are made using the wireline telephone network. Similarly, cellular carriers such as PacTel offer customers free international blocking services so that calls placed to certain foreign countries (i.e., those countries that are notorious for receiving fraudulent calls) require "0+" dialing. However, even after substantial and expensive educational efforts,<sup>10</sup> some customers who never make foreign calls from their cellular telephones nevertheless fail to subscribe to these free services. Although PacTel's policy is not to charge customers for the cellular costs

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that both the IXC and the cellular carrier should share the financial risks of fraud.

<sup>9</sup>See, e.g., CTIA at 3.

<sup>10</sup>These educational efforts include providing information regarding fraud prevention through customer newsletters and notices sent out with billing statements, as well as working with radio and television news programs. In addition, PacTel conducts an active fraud prevention educational program for its employees and others who offer PacTel services to the public.

of such fraudulent, international calls,<sup>11</sup> cellular carriers should be able to hold negligent customers responsible for such calls after they have been notified that they have been the victim of fraud at least once before and if they fail to allow cellular carriers to block prophylactically "1+" international calling.

In addition, some cellular resellers control telephone numbers that have been the subject of fraudulent cellular calls.<sup>12</sup> In those instances, PacTel does not charge for the cellular airtime if the cellular reseller, working with its customer, takes corrective action within three days of PacTel's notifying the cellular reseller that fraudulent calls apparently had been made using the reseller's cellular telephone numbers. In those cases in which a cellular reseller fails to take timely corrective action, however, that cellular reseller carrier should be held responsible for future, preventable cellular fraud.<sup>13</sup>

Fourth, PacTel agrees with those numerous parties that support passage of new federal legislation to clarify that fraudulent cellular calling is a crime that must carry tough criminal penalties.<sup>14</sup> PacTel especially supports the suggestion that such legislation result in the FBI

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<sup>11</sup>As PacTel has not provided international services, the charges for the IXC portion of such fraudulent international calls is a matter between the IXC and its customer.

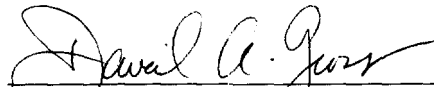
<sup>12</sup>See NCRA at 2-3.

<sup>13</sup>NCRA is simply incorrect when it claims that "neither the ultimate end-user customer nor the cellular reseller has any means within its control to monitor or prevent [cellular toll] fraud..." (NCRA at 2). Rather, by authorizing facilities-based cellular carriers to limit international cellular-originated calls to "0+" dialing, much -- if not virtually all -- such international fraud can be prevented. Because of the role all carriers can and should play to reduce the incidence of fraud, it is important that all carriers, including resellers, be obligated to cooperate fully to minimize the opportunities for fraud and to help prevent it.

<sup>14</sup>See, e.g., CTIA at 9-12; McCaw at 15-21; SNET at 11-12; Southwestern at 9; BellSouth at 10-11; NYNEX at 23-24; GTE at 15; and Vanguard at 10-11.

being given primary jurisdiction to investigate and help prosecute such crimes. Even though passage of such federal legislation is very important, however, it should not delay or adversely effect the need for the Commission to act quickly and decisively to modify its rules and to take the other actions discussed above in these Reply Comments. It is clear from the record already established in this proceeding that time is of the essence.

Respectfully submitted,



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## APPENDIX A

AT&T	=	American Telephone and Telegraph Company
BellSouth	=	BellSouth Telecommunications, Inc. and BellSouth Cellular Corporation
CTIA	=	Cellular Telecommunications Industry Association
GTE	=	GTE Service Corporation
McCaw	=	McCaw Cellular Communications, Inc.
MCI	=	MCI Telecommunications Corporation
NCRA	=	National Cellular Resellers Association
NYNEX	=	NYNEX Corporation
Rochester	=	Rochester Telephone Corporation
SNET	=	Southern New England Telecommunications Corporation
Southwestern	=	Southwestern Bell Corporation and Southwestern Bell Telephone Company
Sprint	=	Sprint Corporation
Vanguard	=	Vanguard Cellular Systems, Inc.

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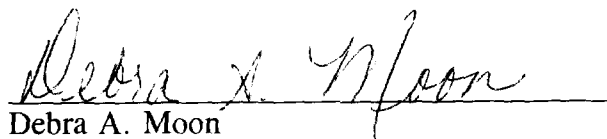
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